



County of Los Angeles CHIEF EXECUTIVE OFFICE

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March 19, 2012

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

This memorandum contains pursuits of County positions on legislation related to granting the California Public Utilities Commission authority to enforce violations of excavation noticing requirements and requiring health care plans and insurance policies to provide coverage for smoking cessation services.

Pursuit of County Position on Legislation

AB 1514 (B. Lowenthal), which as introduced on January 13, 2012, would grant the California Public Utilities Commission (CPUC) the authority to take action against entities that violate the notification procedures for underground excavations.

Existing law requires all operators of subsurface facilities located in public rights-of-way to be members of the Underground Service Alert (USA) Dig Alert, which serves as a communication link for owners of underground utilities and persons who plan to conduct excavation activities. Any entity or person planning an excavation in public rights-of-way must contact the call-center at least two days prior to a planned excavation, and, if practical, delineate the areas to be excavated. This process is intended to notify the owners or operators of underground utilities of excavation activities; prevent damage to subsurface gas, electric, sewer, water and communication lines; and protect public safety.

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Currently, the Attorney General, a district attorney, or the State or a local agency that issue permits to excavate is authorized to initiate a civil action against an operator or excavator who negligently or knowingly violates these provisions. AB 1514 would add the CPUC to the list of entities authorized to take an action against an operator or excavator who violates the USA Dig Alert notification requirements.

The Department of Public Works (DPW) indicates that County projects may involve excavation in locations where underground utilities exist. AB 1514 would not increase the County's notification compliance because notifications are already required under existing law and are handled through the USA Dig Alert notification center. Currently, enforcement actions against the County and its contractors are handled by the permitting agency, the District Attorney or the Attorney General. AB 1514 extends this authority to the CPUC.

County Counsel indicates that AB 1514 would extend CPUC's jurisdiction to public entities that are not currently under its regulatory purview. This would increase costs to local public entities which would be subject to both, CPUC rules and regulations and to the local permitting agency, State, and local enforcement agencies. In addition, the fee generating provisions granted to the CPUC could likely increase the cost to public entities, and increase the probability that multiple entities would bring enforcement action on the same violation. Therefore, County Counsel and DPW recommend that AB 1514 be amended to add language in Government Code Section 4216.6 (4)(b) to clearly indicate that the CPUC does not have any jurisdiction over public entities as follows: "Nothing in this section shall provide for jurisdiction of the CPUC over public entities."

The Department of Public Works and this office oppose AB 1514, unless amended to indicate that the CPUC does not have any jurisdiction over public entities. Therefore, consistent with existing Board policy to: 1) oppose measures that restrict local control over the public rights-of-way; and 2) minimize the adverse impact of State actions, **the Sacramento advocates will oppose AB 1514 unless amended as indicated above.**

AB 1514 is awaiting a hearing in the Assembly Utilities and Commerce Committee. There is no registered opposition or support to this measure at this time.

AB 1738 (Huffman), which as introduced on February 17, 2012, would require health care plans and health insurance policies to provide coverage for tobacco cessation services, including counseling and all Food and Drug Administration (FDA) approved prescriptions and over-the-counter medications.

Existing law requires health care service plans and health insurance policies to provide coverage for certain preventive services without requiring co-payments; however, smoking cessation services is not generally covered.

AB 1738 would require health care plans and individual and group insurance policies that are issued, amended, renewed or delivered on or after January 1, 2013 to include coverage of all smoking cessation treatments rated as an 'A' or 'B' by the United States Preventative Services Task Force. The measure would require health plans to cover two courses of smoking cessation treatment in a 12-month period and include both counseling and over-the-counter and prescription medications approved by the FDA. A course of treatment would be defined as at least four sessions. Counseling may be conducted by telephone, in a group or individually with each session lasting at least ten minutes. Enrollees would not be required to enter counseling prior to being eligible for tobacco cessation medications. No copayment, coinsurance, or deductible would be applied to these services.

According to the Department of Public Health (DPH), cigarette smoking and the use of other tobacco products are the leading cause of preventable deaths in California, and for many other serious health conditions, including heart disease and emphysema. DPH also states that secondhand smoke causes health problems for others, including vulnerable children. DPH indicates that AB 1738 would align with previous efforts by the Department to encourage health plans to provide comprehensive smoking cessation benefits that follow the National Public Health Service's Treating Tobacco Use and Dependence guidelines. The guidelines recommend that both counseling and all FDA-approved medications be included as a paid or covered service for all members of all health insurance packages.

The Department of Health Services states that including smoking cessation programs in basic health insurance coverage would increase preventive care, thus improving health outcomes while decreasing chances of advanced cancer and subsequent costly emergency room visits and treatment.

The Chief Executive Office Employee Compensation notes that all of the County's health insurance plans offer smoking education programs, but most plans do not offer free treatment service and medication. AB 1738 could result in rate increases to the County; however, because less than 700 Flex and Mega Flex members have admitted to smoking in the last 12 months, any increased costs to the County would be minimal.

The Departments of Public Health, Health Services and this office support AB 1738. Therefore, consistent with Board policy to support proposals to increase tobacco

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cessation services including mandating that cessation services be covered as part of employee health benefits, **the Sacramento Advocates will support AB 1738.**

AB 1738 is similar to County-supported measures SB 220 (Yee) of 2010 and SB 136 (Yee) of 2011. SB 220 was vetoed by Governor Schwarzenegger in October 2010. In his veto message, the Governor indicated that SB 220 would expose California to significant unreimbursed mandate costs that would go beyond current Federal law and would limit the ability of the State to manage increasing costs for prescription drugs. SB 136 was amended on April 28, 2011 to delete provisions related to smoking cessation services.

AB 1738 is sponsored by the American Heart Association and the American Lung Association. There is no registered support or opposition on file at this time.

This measure is awaiting a hearing in the Assembly Health Committee.

We will continue to keep you advised.

WTF:RA
MR:VE:GA:lm

c: All Department Heads
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